

**ORDINANCE NO.04-02
TOWN OF TOWNSEND
ANIMAL CONTROL**

Ordinance #33 is repealed in its entirety
Resolution of July 20, 1996 concerning number of Dogs is repealed in entirety

SECTION (1)

- (a) Definitions. For purposes of this section, the following words and phrases shall have the meanings ascribed to them as follows:

Animal Control Agency

A state or county administrative agency or humane society which is authorized by statute or ordinance to enforce any animal control laws or regulations of the state or county.

Animal Control Officer

A person employed by the state, county, town or animal control agency as an enforcement officer.

At Heel

A dog shall be deemed to be at heel when it is directly behind or next to a competent person and obedient to that person's command.

At Large

A dog shall be deemed to be at large when it is off the property of its owners and not under restraint.

Enclosure

A fence or structure of at least six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children and suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering of the vicious dog. Such enclosures shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the animal from escaping from the enclosure.

Owner

Any person, partnership, corporation or other legal entity owning, keeping or harboring one (1) or more animals. Any animal shall be deemed to be harbored if it is fed or sheltered for three (3) consecutive days or more.

Public nuisance animal – Any animal or group of animals which:

- 1.) Is repeatedly found at large;
- 2.) Damages the property of anyone other than its owner;
- 3.) Is vicious;
- 4.) Molests passersby or passing vehicles;
- 5.) Are found to be in violation of Section 22.02.007 the New Castle County Code because of noise and/or noise disturbance they create, as those terms are defined by 22.02.007;
- 6.) Create an odor which is noxious or offensive, and/or which constitutes a substantial annoyance, inconvenience or injury to the public;
- 7.) Interferes with the health, comfort, safety or enjoyment of property, offends the sense of decency of the public as a result of unsanitary conditions in the area where such animals are kept; and/or which creates a danger to the public health as determined by the Division of Public Health;

- 8.) Is a substantial visual annoyance to the public as a result of conditions existing in the area where such animals are kept;
- 9.) Commits waste on property within the Town other than its owner's property and the waste is not immediately removed.

Restraint

Any animal secured by a leash or lead, or at heel, or under the reasonable control of a competent person and obedient to that person's command, or within the real property limits of its owner; or within a vehicle being driven or parked on the streets. Any dog, not within the property limits of its owner or within a vehicle being driven or parked on the street, which, without provocation, bites a person shall be deemed not under restraint.

Vicious Animal

An animal which constitutes a physical threat to human beings or other animals by virtue of attacks of such number and/or severity as to be likely to cause property damage or physical injury. Evidence of a prior instance of an animal biting a human being, without provocations, shall be primary facie evidence that the animal is vicious.

Vicious Dogs

- 1.) Any dog, which when unprovoked in a vicious or terrorizing manner, approaches any person in apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; or
- 2.) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
- 3.) Any dog which bites, inflicts injury, assaults or other attacks a human being or domestic animal without provocation on public or private property; or
- 4.) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

Notwithstanding the definitions of a vicious dog above, no dog may be declared vicious if any injury or damage is sustained by a person who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or teasing, tormenting, abusing, or assaulting the dog or was committing or attempting to commit a crime.

No dog may be declared vicious if any injury or damage was sustained by a domestic animal which, at the time such injury or damage was sustained, was teasing, tormenting, abusing or assaulting the dog. No dog may be declared vicious if the dog was protecting or defending a human being with the immediate vicinity of the dog from an unjustified attack or assault.

Wild Animals

Any non-domesticated animal including but not limited to any live monkey, (nonhuman primate), raccoon, skunk, fox, poisonous snake, boa, python, leopard, panther, tiger, lion, lynx, or any other warm-blooded animal which can normally be found in the wild state.

Farm Animal

Any domesticated animal normally used in agricultural or related pursuits including but not limited to cattle, oxen, sheep, pigs, goats, horses, mules, donkeys, chickens, geese and other poultry, pigeons, peacocks and guinea hens.

SECTION (2)

Restraint and control of animals;

- 1.) All dogs shall be kept under restraint at all times;
- 2.) No owner shall fail to exercise proper care of control of his animals to prevent them from becoming a public nuisance;
- 3.) Vicious animals are not permitted within the Town;
- 4.) Wild animals are not to be kept within the Town;
- 5.) Farm Animals are not permitted within the Town; unless the parcel has proper zoning.

- 6.) Any person convicted of a violation of this ordinance shall pay a mandatory and non-suspend able fine of at least the minimum fine for each offense as follows:
- a. For a violation of the ordinance, a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) for each subsequent offense.
 - b. In addition, upon violation, there may be a discretionary review by the animal control agency to determine whether the animal should be destroyed. The animal control agency may consider any evidence material to whether said animal constitutes a treat to human beings or other animals.

SECTION (3)

Impoundment

Dogs at large and nuisance animals may be taken by an animal control officer and impounded in an animal shelter. At the discretion of the animal control officer, such dog or animal may be left in the custody of its owner and owner issued a summons for violation of this section. Costs of impoundment shall be paid by the owners.

SECTION (4)

Public Nuisance Animals

A reasonable attempt shall be made to notify the owner of any animal suspected of constituting a public nuisance. A public nuisance animal shall, upon demand of the animal control officer, be delivered to the animal control agency. It shall be unlawful for the owner of a public nuisance animal to refuse to surrender such animal to a control officer. Such refusal is punishable by a fine of fifty dollars (\$50.00). A public nuisance animal which has been impounded by the animal control officer may be redeemed by the owner only upon conditions establishing to the satisfaction of the animal control agency that such animal will no longer constitute a public nuisance.

SECTION (5)

Right of Entry of Animal Control Officers

An animal control officer shall have the right to enter upon any outside premises at all reasonable times for the purposes of discharging his or her duties, where deemed necessary for the welfare of any animal or public safety.

SECTION (6)

Enforcement

In addition to the Town of Townsend, the Delaware Society for the Prevention of Cruelty to Animals (S.P.C.A.) shall have the authority for enforcing this Ordinance in the Town of Townsend regarding the regulation of dogs and other animals.

SECTION (7)

Dog Kennels

It shall be unlawful for any person or persons, firm or corporations to house and maintain more than three (3) dogs in the corporate limits of the Town of Townsend unless such person(s), firm, or corporation is a licensed kennel as provided for by this Ordinance. Upon application for a license for the maintenance of a kennel within the corporate limits of the Town of Townsend, The Town inspector shall inspect the premises and facilities thereon for which kennel licenses are requested. Upon approval of facilities, determination that maintenance of a kennel will not interfere with the peaceful enjoyment of adjacent properties, compliance with the Uniform Development Code and all zoning requirements, the applicant shall be issued a license to maintain a kennel within the corporate limits of Townsend. Said license must be renewed annually and can be revoked as provided for by this Ordinance. The Town of Townsend inspector shall make annual inspection of all kennels

licensed under the Ordinance and a special inspection at any time upon petition signed by not less than five residents of Townsend. In the event an inspected kennel should be deemed unclean, unfit or a public nuisance, the license holder shall have five (5) days from the day of inspection to remedy such unsatisfactory condition to the satisfaction of the said Town inspector or suffer revocation of his license. Violation under this section of the Ordinance shall be punishable by a fine of fifty dollars (\$50.00) for the first offense and one hundred dollar (\$100.00) for each subsequent offense and each day of violation shall be deemed a subsequent separate offense.

SECTION (8)

Registration and Licensing

Every person who owns, controls, harbors, possesses or keeps any dog over the age of six months in Townsend shall register with the Town of Townsend by April 15th of each calendar year. At the time of registration, the owner must provide a phone number where they can be reached in case the dog gets loose. The owner shall provide to the Town of Townsend, proof that such dog has a license from the State of Delaware for the current calendar year. Additionally, the person registering their dog, shall provide to Townsend the name, age, breed, color, owner and owner's phone number of such dog. Any person who fails to register their dog for the current calendar year shall be subject to a fine of fifty dollars (\$50.00) for the first offense and one hundred dollars (\$100.00) for each subsequent offense. Proof of a current rabies inoculation must be provided at the time of registration. Five days must elapse between a first and second offense.

SECTION (9)

Severability

If any of the provisions of this Ordinance or the application of any provision thereof shall be held invalid, such invalidity shall not affect the remainder of said Ordinance, it being the intention of the Town of Townsend that such remainder shall be and remain in full force and effect.

SECTION (10)

Effective Date

This Ordinance shall take effect on January 1, 2005. Any person owning more than three (3) dogs on that date is exempt for the life of said dogs, unless said dogs are cited as vicious or nuisance animals.

The revised Ordinance will take effect on January 1, 2008. Any person owning more than three (3) dogs on that date is exempt for the life of said dogs, unless said dogs are cited as vicious or nuisance animals.

First Draft – First Reading & Public Hearing: May 5, 2004
Revised – First & Second Reading: November 23, 2004
Revised – Public Hearing: December 1, 2004
Revised - Third & Final Reading: December 1, 2004
Revised – First & Second Reading: December 5, 2007
Revised – Third & Final Reading: December 19, 2007

Revision adopted by Council of Town of Townsend on _____

David R. Raughley, Mayor